

ANSWERED,—The tenants' clamours have drawn out his pretended reasons to a great length, but they are utterly void of all substance: For, as to the *first*,—He had no right to that barn, but had all other conveniences and accommodations necessary; and it was nothing but absolute necessity that made the Colonel take it down, it being in danger of falling and becoming wholly ruinous. And, as to the *second*,—He was expressly restricted by his tack to labour according to old use and wont: But so it is, this piece of ground is only a light benty surface of a loose sandy ground on the sea side; and, if tilled, would spoil all the neighbouring land, by the tempestuous blowing of the sea in that part. So his damages are imaginary, and cannot, being illiquid, stop his master's clear liquid charge for his rent, which is not so much as denied; but must be reserved to be instructed by way of process, as accords; seeing they consist *in facto*, and cannot be instantly verified.

The Lords thought, that tenants could not be obliged to pay their rents, where they had clear grounds of retention on account of damages arising from the very subject by which they are to pay their rent, though they cannot instantly verify them, as consisting *in facto*; as here the loss he had by wanting the barn and by being stopped from tilling his land: and, therefore, they turned the decreets into a libel, and allowed the tenant all his defences, and to get terms to liquidate his damages, in his declarator, here repeated *incidenter*, before they would decern him to pay his rent: reserving, till the conclusion, to consider where the calumny lay, that the other party's expenses might be modified accordingly.

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1708. November 11. The UNIVERSITY of ST ANDREW'S *against* PROFESSOR CHARLES GREGORY.

I REPORTED the bill of suspension given in by Mr Robert Ramsay, Provost of St Salvator's College in St Andrew's, and the other professors and regents there, against Mr Charles Gregory, professor of mathematics in that University. King Charles the II. in 1668 mortified L.2000 sterling, to be paid out of the Exchequer, for augmenting the masters of that University's salaries, and, particularly, for a mathematic professor: But, the Exchequer withdrawing payment, the Parliament, in 1681, granted half a month's cess to the said college, to be employed and distributed at the sight of the Privy Council. And, accordingly, Mr James Fenton being presented to be professor of mathematics in 1688, both his gift and the Act of the Privy Council modified L.50 sterling yearly for his salary, out of the first and readiest of the rents of the lands purchased with the L.3000 sterling, as the foresaid half month's cess. And the Queen having presented Mr Charles Gregory to that professorship in 1707, he pursues Mr Ramsay and the other masters, as intromitters with the rents of the said lands, out of which his L.50 sterling is made payable, to refund the said sum, as his salary, for the year 1707, and the tenants for paying him in time coming; and obtains a decret *in foro* against them. Whereof the professors gave in a bill of suspension, on thir reasons, That the Privy Council, in 1695, had divided the said half month's cess amongst the masters; whereby the power given them by the Act of Parliament in 1681 was fully exerced, and they were *functi*, and had no more

access to allocate any part of it to Mr Gregory. *2do*, This decret contained no dividend what should be every one's proportion in repaying Mr Gregory's claim; and, therefore, till that were constituted, his decret was lame, imperfect, and null. *3tio*, To give him L.50 sterling out of the first and readiest of the lands, was to give him a preference *tanquam præcipuum* on the fund and subject; which would be very unreasonable: for that were to secure him in that salary *in omnem eventum*; and to cast dead, waste, and poor, on the other masters: So that if the rent, by any casualty or accident, fell short in bad years, they ran the hazard, and he reaped the whole profit.

The Lords, before they would open a decret *in foro*, where all the reasons now alleged were either proponed and repelled, or else were competent and omitted, desired to see how Mr Fenton's gift and Act of Council ran, if it was out of the first and readiest: and, for clearing thereof, George Dallas his printed style-book was produced; who, at p. 173, has recorded Mr James Fenton's gift, patent, and presentation; whereby he is appointed to be paid out of the first and readiest of that fund. And having read the decret, which decerns them all promiscuously to pay him, without mentioning whether *in solidum* or *pro rata*; and finding the division made in 1695 was *sede vacante*, when there was no professor of the mathematics; therefore, the Lords sustained his gift, and refused the bill of suspension; the charger always, under his hand, restricting the charge *quoad* the masters of the University for the crop 1707, which they had intromitted with, and passing from them in time coming, and betaking him to the tenants of the lands out of which his payment is allocated by his gift and Act of Council.

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1708. November 13. JOHN GORDON of ROSECARREL against M'LELLAN.

THE Commissary of Kirkcudbright decerns John Gordon of Rosecarrel to stand at the market-cross with a paper on his breast, bearing it was for defaming and slandering of Helen Maxwell, spouse to Charles M'LeLLan of Colline, as guilty of adultery: and also, to stand bareheaded at the church door, and acknowledge, that he had fasely lied on her, and then to pay 500 merks to Samuel Cairmont, his procurator-fiscal, as a pecuniary mulct for his defamation, and repairing her honour.

Of this sentence he craves a suspension, on this reason,---That all proven against him was, that he had come to the minister and some of the elders, and told he had heard a *fama clamosa* in the country, of her being guilty, and asked them what they knew about it: the occasion whereof was neither an affected curiosity nor a malicious design to reproach her; but having got a citation in August last, when the clerks to the circuit courts were taking up dittays for the Porteous-roll, to compear and depone what delinquents or criminals he knew in his bounds; having oft heard a flagrant report and suspicion of her being an adulteress, he, for clearing his own conscience, *ad exonerandam animam*, went to the minister and kirk-session to be informed if there were any grounds for that report, before he should give his oath; which was no more than the duty of every good man: and yet this is aggravated by the commissary as a crime, and the foresaid unjust sentence pronounced thereon. And that the